

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHARLES K. BRIDWELL,)	CASE NO. _____
)	
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
DEPARTMENT OF VETERANS)	
AFFAIRS,)	
)	
Defendant.)	

The plaintiff, Charles K. Bridwell, states as follows:

1. He is a resident of Superior, Nuckolls County, Nebraska.
2. Jurisdiction in this matter is based upon 28 U.S.C. §1346(b) and 28 U.S.C. §§2671-2680, commonly known as the Federal Tort Claims Act.
3. As required by statute, Charles K. Bridwell presented his claim on Standard Form 95 with the defendant by mailing this claim to the Department of Veterans Affairs Medical Center, 4101 Woolworth Ave., Omaha, NE 68105 on February 24, 2010. This claim was received on February 26, 2010 and was assigned Claim number GCL-6570-71059. A copy of the claim and receipt thereof are attached hereto as Exhibit 1 and incorporated herein by reference.
4. On June 15, 2011, the Department of Veterans Affairs denied the claim of the plaintiff.

5. Plaintiff is a resident of Superior, Nuckolls County, Nebraska. On May 8, 2007, physicians employed by the defendant in Omaha, Douglas County, Nebraska, performed an operative procedure known as a closed septorhinoplasty on Charles K. Bridwell. During the course of this operation, a 4-cm. Mercucel pack was inserted high in the left and right nostrils of Charles K. Bridwell. On post-op visits at the Veterans Administration Hospital in Omaha, Douglas County, Nebraska, Charles K. Bridwell complained of nasal congestion and difficulty breathing.

6. On November 8, 2007, physicians employed by the defendant performed an operation to remove portions of the nasal pack which had been placed in the right nasal cavity of Charles K. Bridwell.

7. Charles K. Bridwell continued to complain of difficulties in breathing. On April 24, 2009, physicians employed by the defendant performed the procedure known as a nasal deformity upper eyelid skin excess procedure. That this procedure did not relieve Charles K. Bridwell's breathing problems.

8. On November 3, 2009, because of Charles K. Bridwell's continuing complaints of breathing difficulties, Dr. Richard Bowen, an otolaryngologist, performed an operation at Mary Lanning Memorial Hospital in Hastings, Nebraska. The purpose of this procedure was multi-factoral. During this procedure,

Dr. Bowen performed a revision of this septorhinoplasty procedure that was originally performed on May 8, 2007, and in addition, removed a foreign object which was located in the left side of plaintiff's nasal cavity. This foreign object was identified as a sponge and was felt to be a sponge which was originally inserted during the May 8, 2007 procedure.

9. On December 1, 2009, Dr. Richard Bowen performed an operation on Charles K. Bridwell at Mary Lanning Hospital. During this procedure, he removed more of the sponge which had been placed during the operation of May 8, 2007.

10. The physicians and other medical personnel employed by the defendant during the period of time from May 8, 2007 through April 24, 2009, were negligent in their care and treatment of Charles K. Bridwell in each and all of the following respects:

- a) In failing to remove packing and/or sponges placed in plaintiff's left and right nostrils after the surgery on May 8, 2007;
- b) In failing to properly perform a closed septorhinoplasty on May 8, 2007, which necessitated a revision on April 24, 2009;
- c) In failing to remove the retained nasal pack mass during the operation performed on November 8, 2007;
- d) In failing to properly evaluate Charles K. Bridwell on his post-operative visits.

11. As a direct and proximate result of the negligence of the employees of the defendant, Department of Veterans Affairs,

Charles K. Bridwell has sustained the following by way of damages:

- a) numerous operative procedures to remove the sponges and packing placed in his left and right nostrils;
- b) physical pain and suffering in the past, and it is reasonably certain he will sustain physical pain and suffering for an indefinite period of time in the future;
- c) medical bills in the past, and it is reasonably certain he will sustain medical bills for an indefinite period of time in the future;
- d) permanent injury;
- e) permanent disability.

WHEREFORE, plaintiff prays for judgment against the defendant as follows:

- A) For special damages and general damages in the amount of \$1,250,000.00, and the costs of this action; and
- B) For other damages that are reasonable and proper.

CHARLES K. BRIDWELL, Plaintiff

By: 

E. Terry Sibbernson #13826
SIBBERNSEN, STRIGENZ &
SIBBERNSEN, P.C.
1111 N.102nd Court, #330
Omaha, NE 68114
(402) 493-7221

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: Dept. of Veterans Affairs Medical Center 4101 Woolworth Ave. Omaha, NE 68105			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) Charles K. Birdwell 1041 E. 3rd ST. Superior, NE 68978		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 1/9/42	5. MARITAL STATUS married	6. DATE AND DAY OF ACCIDENT 5/8/07, 11/8/07 and 4/24/09	7. TIME (A.M. OR P.M.) unknown	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) See attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.					
As a result of the negligence of the physicians and other medical personnel employed by the Veterans Administration, Charles Birdwell has had to undergo additional surgeries, pain and suffering, cosmetic deformity of his face, permanent scarring and permanent injuries.					
11. WITNESSES					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
Individuals listed in the medical records					
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY \$1,250,000.00	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$1,250,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>Charles K. Birdwell</i>		13b. Phone number of person signing form 402-879-1022	14. DATE OF SIGNATURE 2/23/10		
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS			
The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)		Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)			

EXHIBIT

tabbies

No. 8: Basis of Claim

On May 8, 2007, physicians employed by the Veterans Administration Hospital in Omaha, Nebraska performed an operative procedure known as a closed septorhinoplasty on Charles Birdwell. During the course of this operation, a 4-cm. Mercocel pack was inserted high in the left and right nostrils of Charles Birdwell. On post-op visits at the Veterans Administration Hospital, Charles Birdwell complained of nasal congestion and a difficult time breathing.

On November 8, 2007, physicians employed by the Veterans Administration performed an operation to remove portions of the nasal pack which had been placed in the right nasal cavity of Charles Birdwell.

On April 24, 2009, because of Charles Birdwell's continued complaints of difficulty breathing, physicians employed by the Veterans Administration performed a procedure known as a nasal deformity upper eyelid skin excess procedure.

On November 3, 2009, because of Charles Birdwell's continued complaints of breathing difficulties, Dr. Richard Bowen, an otolaryngologist, performed an operation at Mary Lanning Memorial Hospital in Hastings, Nebraska. The purpose of this procedure was multi-factorial. During this procedure, Dr. Bowen performed a revision of the septorhinoplasty procedure that was originally performed on May 8, 2007, and in addition, removed a foreign object which was located in the left side of Charles Birdwell's nasal cavity. This foreign object was identified as a sponge and was felt to have been a sponge which was initially inserted during the May 8, 2007 procedure.

On December 1, 2009, Dr. Richard Bowen performed an operation on Charles Birdwell at Mary Lanning Memorial Hospital. During this procedure he removed some more of the sponge which had been placed during the operation on May 8, 2007.

That the physicians employed by the Veterans Administration Hospital and other medical personnel employed by the Veterans Administration Hospital during the period of time from May 8, 2007 through April 24, 2009, were negligent in their care and treatment of Charles Birdwell in each and all of the following respects:

- a) In failing to remove the packing and/or sponges placed in his left and right nostrils after the surgery on May 8, 2007;
- b) In failing to properly perform the closed septorhinoplasty on May 8, 2007, which necessitated a revision on April 24, 2009;
- c) In failing to remove the retained nasal pack mass during the operation performed on November 8, 2007;
- d) In failing to properly evaluate Charles Birdwell on his post-operative visits.

That the procedures performed on Charles Birdwell by Dr. Richard Bowen on November 3, 2009 and December 1, 2009, were the result of the negligence of the physicians and other medical personnel employed by the Veterans Administration Hospital.

Please respond to this claim to the following:

B. Terry Sibbernson
SIBBERNSEN & STRIGENZ
1111 N.102nd Ct., #330
Omaha, NE 68114
(402) 493-7221

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p><i>Dept. of Veterans Affairs Medical Center 4101 Woodworth Ave. Omaha, NE 68105</i></p>		<p>B. Received by (Printed Name) <i>Stephen P. Walker</i></p>	<p>C. Date of Delivery</p>
<p>2. Article Number (Transfer from service label)</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	

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<p>Sent To <i>V.A. Hosp</i></p> <p>Street, Apt. No., or PO Box No. <i>4101 Woodworth Ave</i></p> <p>City, State, ZIP+4 <i>Omaha NE 68105</i></p>	
PS Form 3800, June 2002 See Reverse for Instructions	

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